

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD T.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

8:18CV162

**MEMORANDUM
AND ORDER**

On May 26, 2021, the Court of Appeals, upon granting an unopposed motion filed by the Commissioner, reversed this court's judgment and remanded with directions for the court to address Plaintiff's claim based on the Appointments Clause of the Constitution in the first instance. (Filing 32.) The Court of Appeals' mandate was issued that same date. (Filing 33.)

The reversal and remand were made in light of *Carr v. Saul*, 141 S.Ct. 1352 (2021), in which the Supreme Court held that social security claimants do not forfeit Appointments Clause challenges by failing to raise those challenges in proceedings before the agency. In the unopposed motion the Commissioner filed with the Court of Appeals, it was requested that the Court "vacate the district court's judgment and remand for further proceedings consistent with *Carr*, so that plaintiff can obtain a new hearing before a different, properly appointed ALJ." (Unopposed Motion for Vacatur and Remand to the District Court, filed May 25, 2021, in Court of Appeals Docket # 20-3064.) This appears to be the proper remedy in a case such as this. *See Lucia v. S.E.C.*, 138 S. Ct. 2044, 2055 & n. 6 (2018).

Accordingly,

IT IS ORDERED that unless either party files an objection with 14 days from today's date, the court will enter a judgment vacating the Commissioner's decision

and remanding the case to the Commissioner for a new hearing before a different, constitutionally appointed administrative law judge.

Dated this 7th day of June, 2021.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive, flowing style.

Richard G. Kopf
Senior United States District Judge